



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable B. M. Whiteacre  
County Auditor  
Grayson County  
Sherman, Texas

Dear Sir:

Opinion Number 0-2760  
Re: Authority of Commissioners'  
Court to transfer an anticipated income from the cash balance of the Permanent School Fund to the Available School Fund.

We have your letter of September 17, setting forth the following facts:

"The Grayson County Permanent School Fund has a profit of \$2,271.47, occasioned by bonds being purchased during 1932 and 1933 below par value.

"The above mentioned bonds mature from 1948 to 1965 and at that time the \$2,271.47 would be credited to the Available School Fund on a per capita basis of all scholastics of the county. There is a cash balance at this time of \$2,890.00 in the Permanent School Fund derived from other maturing bonds."

Your question being --

"From the above information would the Commissioners' Court have the authority under Article 7, Section 6, Constitution of Texas, Article 2824 of Vernon's Annotated Civil Statutes, to transfer the \$2,271.47 from the cash balance of the Permanent School Fund to the interest account in order that the Available School Fund could receive the benefit now in lieu of from 1948 to 1965?"

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The pertinent part of Article 7, Section 6 of the Constitution, reads as follows:

"Said lands and the proceeds thereof when sold shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon and other revenue except the principal shall be available funds."

Article 2824 is the Enabling Act, passed pursuant to the above quoted constitutional provision, and is substantially the same with the exception that it enumerates other bonds which may be purchased with the proceeds from the sale of lands granted to the county for educational purposes.

It will be noted that only the income of the above sanctioned investment is available for annual expenditures in the operation of the schools of the county. We have heretofore concluded in our opinion number 0-823 that a profit resulting from the purchase of bonds at a figure below par, and the subsequent retirement of such bonds or sale at a price in excess of that paid, constitutes income and is, therefore, eligible to be transferred to the Available School Fund of the county.

It is clear from the statement of facts above quoted that the figure of \$2,271.47 is an anticipated profit which cannot accrue until the bonds have matured and are paid by the issuing political subdivision. Manifestly, this figure constitutes no more than a "paper profit" and does not represent cash in hand eligible for transfer to the Available Fund. Actually, if at all, it will not accrue to the Permanent School Fund until the years 1948 to 1965. Experience has proven that we have no guarantee that bonds will be paid according to the contract reflected therein, and it is beyond the power of anyone to foretell definitely the amount of money that will be

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received for said bonds at any time between the years 1948 to 1965. It is our conclusion that the Commissioners' Court is not authorized to make a transfer of cash from the corpus of the Permanent School Fund against an anticipated accrual of profit from bonds at some future date.

You are, therefore, advised that in our opinion such transfer as is contemplated by your question, cannot lawfully be made, for, obviously, the anticipated profit cannot become available funds until collected.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Clarence E. Crowe*  
Clarence E. Crowe  
Assistant

CEC-s

APPROVED OCT 7, 1940

*Gerald B. Mann*  
ATTORNEY GENERAL OF TEXAS

